

Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

SEAN WILSON, individually and on behalf
of all other similarly situated,

Plaintiff,

v.

PTT, LLC, a Delaware limited liability
company d/b/a HIGH 5 GAMES, LLC, a
Delaware limited liability company,

Defendant.

NO. 3:18-cv-05275-RBL

ANSWER TO COMPLAINT

JURY DEMAND

Defendant High 5 Games, LLC (“High 5”), by and through its attorneys of record, Holland & Hart LLP, admits, denies, and states as follows in response to the Class Action Complaint (“Complaint”) filed by Plaintiff Sean Wilson (“Wilson”) on April 6, 2018.

NATURE OF THE ACTION¹

1. Responding to paragraph 1 of the Complaint, High 5 admits that it develops video games for the online market; that at least some video games in the online market are from time-to-time referred to as “casual games”; and that High 5’s online video games appeal to a mass audience and are popular. Except as so admitted, High 5 denies the allegations contained in paragraph 1.

¹ High 5’s Answer repeats the same headings utilized in the Complaint filed by Wilson simply for organizational clarity, and by doing so High 5 does not concede the accuracy or appropriateness of such headings or waive any objections thereto.

1 games in the online market are from time-to-time referred to as “free-to-play” video games;
2 and that in some instances at least some online video games permit players to purchase
3 various items in transactions that are from time-to-time referred to as “micro-transactions” or
4 “in-app purchases.” Except as so admitted, High 5 denies the allegations contained in
5 paragraph 11.

6 12. Responding to paragraph 12 of the Complaint and footnotes 1 and 2 thereto,
7 High 5 denies the allegations. High 5 further avers that the articles referenced therein are not
8 proper subjects of judicial notice.

9 13. Responding to paragraph 13 of the Complaint and footnote 3 thereto, High 5
10 denies the allegations. High 5 further avers that the articles referenced therein are not proper
11 subjects of judicial notice.

12 14. Responding to paragraph 14 of the Complaint and footnote 4 thereto, High 5
13 denies the allegations. High 5 further avers that the articles referenced therein are not proper
14 subjects of judicial notice.

15 15. Responding to paragraph 15 of the Complaint and footnote 5 thereto, High 5
16 denies the allegations. High 5 further avers that the articles referenced therein are not proper
17 subjects of judicial notice.

18 16. Responding to paragraph 16 of the Complaint and footnote 6 thereto, High 5
19 denies the allegations. High 5 further avers that the articles referenced therein are not proper
20 subjects of judicial notice.

21 17. Responding to paragraph 17 of the Complaint and footnote 7 thereto, High 5
22 denies the allegations. High 5 further avers that the articles referenced therein are not proper
23 subjects of judicial notice.

24 18. Responding to paragraph 18 of the Complaint and footnote 8 thereto, High 5
25 denies the allegations. High 5 further avers that the articles referenced therein are not proper
26 subjects of judicial notice.

1 19. Responding to paragraph 19 of the Complaint and footnote 9 thereto, High 5
2 denies the allegations. High 5 further avers that the articles referenced therein are not proper
3 subjects of judicial notice.

4 20. Responding to paragraph 20 of the Complaint, High 5 admits that it is a
5 leading developer and provider of game content for “land-based” platforms; that High 5 was
6 the developer of the Da Vinci Diamonds game, which was released in 2008 and was one of
7 the best performing games in High 5’s history; and that High 5 subsequently launched the
8 Golden Goddess and Black Widow games, both of which have likewise been successful and
9 have been described as “mega hits.” Except as so admitted, High 5 denies the allegations
10 contained in paragraph 20.

11 21. Responding to paragraph 21 of the Complaint, High 5 admits that it develops
12 video games for the online market; that at least some video games in the online market are
13 from time-to-time referred to as “casual games”; and that High 5 online video games can be
14 played on the Apple iOS, Android, and Facebook platforms. Except as so admitted, High 5
15 denies the allegations contained in paragraph 21.

16 22. Responding to paragraph 22 of the Complaint, High 5 denies the allegations.

17 23. Responding to paragraph 23 of the Complaint, High 5 admits that individuals
18 playing its online video games are awarded free virtual coins when they begin playing a
19 game. Except as so admitted, High 5 denies the allegations contained in paragraph 23.

20 24. Responding to paragraph 24 of the Complaint, High 5 admits that it is possible
21 that an individual playing certain High 5 online video games could be shown an image
22 depicted in Figure 1, the wording of which speaks for itself. Except as so admitted, High 5
23 denies the allegations contained in paragraph 24.

24 25. Responding to paragraph 25 of the Complaint, High 5 admits that it is possible
25 that an individual playing certain High 5 online video games could be shown the image
26 depicted in Figure 2, the wording of which speaks for itself. Except as so admitted, High 5
 denies the allegations contained in paragraph 25.

1 26. Responding to paragraph 26 of the Complaint, High 5 denies the allegations.

2 27. Responding to paragraph 27 of the Complaint, High 5 admits that it is possible
3 that an individual playing certain High 5 online video games could be shown the image
4 depicted in Figure 3, the wording of which speaks for itself. Except as so admitted, High 5
5 denies the allegations contained in paragraph 27.

6 28. Responding to paragraph 28 of the Complaint, High 5 admits that, once a
7 player of High 5 online video games presses the spin button, no further action on his or her
8 part is required for purposes of that spin; that the player's computer or mobile device
9 communicates with and sends information to High 5 servers; that High 5 servers execute
10 game algorithms that determine the outcome of a spin; and that spin outcomes do not depend
11 on player skill. Except as so admitted, High 5 denies the allegations contained in paragraph
12 28.

13 29. Responding to paragraph 29 of the Complaint, High 5 admits that individuals
14 playing High 5 online video games, at the conclusion of a spin, can continue playing the game
15 or can exit and return at a later time to initiate a new spin; and that High 5 maintains records
16 of each High 5 online game player's spins and virtual coin balances. Except as so admitted,
17 High 5 denies the allegations contained in paragraph 29.

18 **FACTS SPECIFIC TO PLAINTIFF WILSON**

19 30. Responding to paragraph 30 of the Complaint, High 5 admits that Wilson has
20 used the High 5 Casino app, that Wilson made a single in-app purchase of virtual coins on
21 December 17, 2016 through Apple's App Store, and that for purposes of that single in-app
22 purchase from Apple's App Store, Wilson was using an Apple iOS device to obtain access.
23 Except as so admitted, High 5 denies the allegations contained in paragraph 30.

24 31. Responding to paragraph 31 of the Complaint, High 5 admits that, between
25 December 17, 2016 (the date that Wilson made his single in-app purchase of virtual coins
26 through Apple's App Store) and April 6, 2018 (the date of the Complaint): (1) Wilson logged
into the High 5 Casino on December 21 and 22, 2016, and January 1, 2017, receiving free

1 virtual coins but not playing any video games in each instance; and (2) Wilson logged into the
 2 High 5 Casino on January 4 and 14, 2017, receiving free coins in each instance, and playing
 3 the “Bah, Humbug!,” “Aegean Sunset,” and “Hoot Loot” video games. Except as so
 4 admitted, High 5 denies the allegations contained in paragraph 31.

5 **CLASS ALLEGATIONS**

6 32. Responding to paragraph 32 of the Complaint, High 5 admits that Wilson
 7 purports to bring this action as a class action lawsuit on behalf of himself and a particular
 8 class of individuals, with particular people purportedly excluded from the class. Except as so
 9 admitted, High 5 denies the allegations contained in paragraph 32.

10 33. Responding to paragraph 33 of the Complaint, High 5 denies the allegations.

11 34. Responding to paragraph 34 of the Complaint, High 5 denies the allegations.

12 35. Responding to paragraph 35 of the Complaint, High 5 denies the allegations.

13 36. Responding to paragraph 36 of the Complaint, High 5 denies the allegations.

14 37. Responding to paragraph 37 of the Complaint, High 5 denies the allegations.

15 38. Responding to paragraph 38 of the Complaint, High 5 denies the allegations.

16 39. Responding to paragraph 39 of the Complaint, High 5 states that no response
 17 to the statement contained therein is required. To the extent a response is required, High 5
 18 avers that it reserves the right to respond should Wilson attempt to revise any aspect of his
 19 “Class Allegations” or “Class Definition,” and High 5 expressly preserves any and all
 20 objections to any such attempted revisions.

21 **FIRST CAUSE OF ACTION**

22 **Violations of Revised Code of Washington § 4.24.070** 23 **(On behalf of Plaintiff and the Class)**

24 40. Responding to paragraph 40 of the Complaint, High 5 incorporates the
 25 foregoing responses to Wilson’s allegations as if fully set forth herein.

26 41. Responding to paragraph 41 of the Complaint, High 5 admits that RCW
 9.46.0289 is a statute and that the statutory language speaks for itself. Except as so admitted,
 High 5 denies the allegations contained in paragraph 41.

1 42. Responding to paragraph 42 of the Complaint, High 5 admits that RCW
2 9.24.070 is a statute and that the statutory language speaks for itself. Except as so admitted,
3 High 5 denies the allegations contained in paragraph 42.

4 43. Responding to paragraph 43 of the Complaint, High 5 admits that RCW
5 9.46.0237 is a statute and that the statutory language speaks for itself. Except as so admitted,
6 High 5 denies the allegations contained in paragraph 43.

7 44. Responding to paragraph 44 of the Complaint, High 5 denies the allegations.

8 45. Responding to paragraph 45 of the Complaint, High 5 denies the allegations.

9 46. Responding to paragraph 46 of the Complaint, High 5 denies the allegations.

10 47. Responding to paragraph 47 of the Complaint, High 5 denies the allegations.

11 48. Responding to paragraph 48 of the Complaint, High 5 denies the allegations.

12 49. Responding to paragraph 49 of the Complaint, High 5 admits that RCW
13 9.46.0285 is a statute and that the statutory language speaks for itself. Except as so admitted,
14 High 5 denies the allegations contained in paragraph 49.

15 50. Responding to paragraph 50 of the Complaint, High 5 denies the allegations.

16 51. Responding to paragraph 51 of the Complaint, High 5 admits that RCW
17 9.46.0225 is a statute and that the statutory language speaks for itself. Except as so admitted,
18 High 5 denies the allegations contained in paragraph 51.

19 52. Responding to paragraph 52 of the Complaint, High 5 admits that RCW
20 9.46.0201 is a statute and that the statutory language speaks for itself. Except as so admitted,
21 High 5 denies the allegations contained in paragraph 52.

22 53. Responding to paragraph 53 of the Complaint, High 5 admits that Wilson has
23 filed this action, purportedly on behalf of himself and a “Class,” and purportedly seeking
24 certain relief. Except as so admitted, High 5 denies the allegations contained in paragraph 53.

SECOND CAUSE OF ACTION

**Violations of the Washington Consumer Protection Act, § RCW 19.86.010, et seq.
(On behalf of Plaintiff and the Class)**

54. Responding to paragraph 54 of the Complaint, High 5 incorporates the foregoing responses to Wilson's allegations as if fully set forth herein.

55. Responding to paragraph 55 of the Complaint, High 5 admits that RCW 19.86.010 *et seq.* is a series of statutes and that the statutory language speaks for itself. Except as so admitted, High 5 denies the allegations contained in paragraph 55.

56. Responding to paragraph 56 of the Complaint, High 5 admits that RCW 19.86.020 is a statute and that the statutory language speaks for itself. Except as so admitted, High 5 denies the allegations contained in paragraph 56.

57. Responding to paragraph 57 of the Complaint, High 5 admits that RCW 19.86.010 *et seq.* is a series of statutes and that the statutory language speaks for itself. Except as so admitted, High 5 denies the allegations contained in paragraph 57.

58. Responding to paragraph 58 of the Complaint, High 5 admits that RCW 19.86.010 *et seq.* is a series of statutes and that the statutory language speaks for itself. Except as so admitted, High 5 denies the allegations contained in paragraph 58.

59. Responding to paragraph 59 of the Complaint, High 5 denies the allegations.

60. Responding to paragraph 60 of the Complaint, High 5 denies the allegations.

61. Responding to paragraph 61 of the Complaint, High 5 denies the allegations.

62. Responding to paragraph 62 of the Complaint, High 5 denies the allegations.

63. Responding to paragraph 63 of the Complaint, High 5 denies the allegations.

64. Responding to paragraph 64 of the Complaint, High 5 denies the allegations.

65. Responding to paragraph 65 of the Complaint, High 5 admits that Wilson has filed this action, purportedly on behalf of himself and a "Class," and purportedly seeking certain relief. Except as so admitted, High 5 denies the allegations contained in paragraph 65.

THIRD CAUSE OF ACTION
Unjust Enrichment
(On behalf of Plaintiff and the Class)

66. Responding to paragraph 66 of the Complaint, High 5 incorporates the foregoing responses to Wilson's allegations as if fully set forth herein.

67. Responding to paragraph 67 of the Complaint, High 5 denies the allegations.

68. Responding to paragraph 68 of the Complaint, High 5 denies the allegations.

69. Responding to paragraph 69 of the Complaint, High 5 denies the allegations.

70. Responding to paragraph 70 of the Complaint, High 5 denies the allegations.

71. Responding to paragraph 71 of the Complaint, High 5 admits that Wilson has filed this action, purportedly on behalf of himself and a "Class," and purportedly seeking certain relief. Except as so admitted, High 5 denies the allegations contained in paragraph 71.

RESPONSE TO WILSON PRAYER FOR RELIEF

High 5 responds that Wilson is not entitled to any relief in this action.

AFFIRMATIVE DEFENSES

As affirmative defenses, High 5 alleges and states as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint, and each cause of action alleged therein, fails to set forth facts sufficient to state a claim upon which relief may be granted against High 5 and further fails to state facts sufficient to entitle Wilson or any members of the putative class to the relief sought or to any other relief whatever from High 5.

SECOND AFFIRMATIVE DEFENSE

(Lack of Personal Jurisdiction)

The Court lacks personal jurisdiction over High 5.

THIRD AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

The Court lacks subject matter jurisdiction over the putative class claims under the Class Action Fairness Act, 28 U.S.C. § 1332(d).

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Wilson and putative class members' claims are barred, in whole or in part, by their failure to mitigate damages, if any.

FIFTH AFFIRMATIVE DEFENSE

(Waiver, Estoppel, Unclean Hands, and/or Laches)

Wilson's claims, and those claims Wilson purports to bring on behalf of members of the putative class, are barred, in whole or in part, by the doctrines of waiver, estoppel, unclean hands, and laches.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Some or all of Wilson's claims, and those claims Wilson purports to bring on behalf of members of the putative class, are barred by the applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

(Choice of Law)

Wilson and putative class members have contractually agreed to the application of New Jersey law to disputes at issue in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

(Lack of Standing)

Wilson's claims, and those claims Wilson purports to bring on behalf of the putative class, are barred in whole or in part because Wilson and the putative class members lack standing to assert the alleged claims.

NINTH AFFIRMATIVE DEFENSE

**(Consent, Notification, Ratification, Acquiescence, Authorization, Account Stated,
and/or Acceptance)**

Wilson's claims, and those claims Wilson purports to bring on behalf of members of the putative class, are barred, in whole or in part, by the existence of consent, notification, ratification, acquiescence, authorization, account stated, and/or acceptance.

TENTH AFFIRMATIVE DEFENSE

(Voluntary Payment Doctrine)

Wilson's claims, and those claims Wilson purports to bring on behalf of members of the putative class, are barred by the voluntary payment doctrine.

ELEVENTH AFFIRMATIVE DEFENSE

(Comparative Fault and/or Assumption of Risk)

Wilson's claimed damages, and any alleged damages of putative class, are in whole or in part due to the actions and/or omissions of Wilson and putative class members, which conduct will bar such claims or reduce such claims in an amount to be determined at the time of trial.

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Establish Conditions Precedent, Statutory Defenses)

Wilson has not and cannot establish the conditions precedent to asserting any claims arising out of or relating to High 5 under the Washington Gambling Act, Recovery of Money Lost at Gambling Act, or the Washington Consumer Protection Act. High 5 is entitled to any and all limitations of liability and defenses provided under the foregoing statutes.

THIRTEENTH AFFIRMATIVE DEFENSE

(Acts or Omissions of Third Parties)

All or part of the damages alleged in the Complaint, if any, were caused by the acts and/or omissions of third parties.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Economic Loss Rule)**

3 Wilson's claims, and those claims Wilson purports to bring on behalf of members of
4 the putative class, are barred by the economic loss rule.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 **(Reliance on Government Agencies)**

7 Wilson's claims, and the claims of putative class members, are barred on the ground
8 that High 5 relied on guidance from relevant government agencies, including, without
9 limitation, the Washington Gambling Commission.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 **(Contractual Limitations)**

12 Wilson and putative class members are barred from recovery, in whole or in part,
13 because of the terms to which Wilson and putative class members agreed in the applicable
14 Terms of Use.

15 **PRAYER FOR RELIEF**

16 WHEREFORE High 5 respectfully prays as follows:

17 A. That Wilson takes nothing by way of his Complaint;

18 B. That judgment be entered in favor of High 5 and against Wilson on all alleged
19 causes of action;

20 C. That High 5 be awarded attorneys' fees and costs of suit as may be appropriate
21 under applicable statutes and law; and

22 D. That the Court award High 5 such other and further relief as the Court may
23 deem just and appropriate.

24 **JURY DEMAND**

25 High 5 hereby demands trial by jury on all issues so triable.
26

1 DATED this 7th day of January, 2019.

2 s/ Christopher A. Wright

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2019, I electronically filed the foregoing **Answer to Complaint and Jury Demand** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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